(1)

93-69

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

STATE OF ALABAMA,

Petitioner,

v.

RICKEY LEE JOHNSON,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALABAMA

PETITION OF THE STATE OF ALABAMA

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QUESTIONS PRESENTED

I.

Whether this Court should grant certiorari and summarily reverse the decision of the Alabama Supreme Court, which is in direct conflict with the federal constitutional principles announced by this Court that require only proof of voluntariness when a defendant's statement is introduced by the prosecution solely to impeach the defendant's credibility?

II.

Whether this Court should grant certiorari and summarily reverse the decision of the Alabama Supreme Court on a question of federal law, holding that proof of full compliance with Miranda v. Arizona, 384 U.S. 436 (1966) is required when the prosecution offers the

defendant's statement for purposes of impeachment, because this decision is in conflict with decisions of the United States Courts of Appeal and with decisions of other state courts of last resort on this federal question?

III.

Whether this Court should grant certiorari and summarily reverse the decision of the Alabama Supreme Court because in ignoring this Court's prior rulings on this Constitutional issue, the Alabama Supreme Court demonstrated hostility toward this Court's supremacy and has now positioned Miranda v. Arizona as a barrier to the admission of voluntary statements for impeachment purposes in all trials in Alabama?

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OPINION BELOW

The January 15, 1993 opinion of the Alabama Supreme Court reversing Rickey Lee Johnson's conviction (Alabama S.Ct. No. 1910945) is not yet reported. The opinion is reproduced as Appendix A in the Appendix volume accompanying this Petition, as is the April 9, 1993 order of the Alabama Supreme Court denying the State's Application for Rehearing, as Appendix B.[1]

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[1]The Appendix to this Petition is separately bound pursuant to Rule 14.1(k).

JURISDICTION

The judgment of the Alabama Supreme Court was issued on January 15, 1993. The Petitioner's Application for Rehearing was overruled on April 9, 1993. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides, in pertinent part:

> No person ... shall be compelled in any criminal case to be a witness against himself....

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

> No state shall ... deprive any person of life, liberty, or property, without due process of law....

STATEMENT OF THE CASE

A. Statement of the Facts

Seventy-year-old Emma Whitehead was beaten to death in her home on June 8, 1988. Ms. Whitehead's cousin, Ruby Brown, was beaten and robbed by the same perpetrator, later identified to be Respondent Rickey Lee Johnson. After beating the women and robbing Ms. Brown, Johnson started two fires in the house and fled the scene. Emma Whitehead died, and Johnson was charged with robbery/murder. Ala. Code §13A-5-40(a)(2)(1975).

Johnson gave a statement to the police after his arrest and he completely denied any involvement in the robbery/murder; that statement was audiotaped by the police and it was transcribed. (R. 1078-1114) The prosecution did not offer the statement into evidence in its case-in-chief.

Johnson testified in his own defense at trial (R. 986-1000), and he denied any

involvement in the crime. On direct examination and on cross-examination, Johnson detailed his activities on the day the robbery/murder took place, and he testified about his maneuvers to avoid the police for several days after the crime, as well as his reasons for fleeing from the police. (R. 993-1000, 1002-1035, 1039-1053, 1064-1072) Johnson also testified about the clothing he wore on the day of the robbery/murder. (R. 1008, 1018, 1053-1054, 1059)

During cross-examination, Johnson acknowledged that he previously made a statement to the police. (R. 1074) He explained and/or denied various portions of the statement that conflicted with his trial testimony about, among other things, the clothing he wore on the day of the robbery/murder, his attempts to evade the police, and his reasons for fleeing (R. 1043-1046, 1071-1073, 1076-1077).

In rebuttal, the prosecution offered into evidence the taped statement Johnson gave to the police after he was arrested, that detailed his activities before and after the robbery/murder and contained the statements that he denied and/or explained away during his testimony at trial. Before the tape was admitted into evidence in rebuttal, the prosecutor elicited the following testimony to establish the voluntariness of Johnson's statement:

> Q. [Prosecutor] All right. Then did you have a conversation with Rickey Johnson?
>
> A. [Sergeant Boissel] I did.
>
> Q. All right. Prior to having this conversation with Rickey Johnson did you read him what is commonly known as his Miranda rights?
>
> A. I did.
>
> Q. And prior to having this conversation with Rickey Johnson did you threaten or coerce Rickey Johnson in anyway in order to get him to make a statement to you?
>
> A. I did not.

Q. Did you offer him any reward or hope of reward in order to get him to make a statement to you?

A. No.

Q. Did you tell Mr. Johnson it would be better for him to make a statement or worse for him if he did not make a statement?

A. No, I didn't.

Q. All right. Did he indicate to you that he wished at that time to make a statement?

A. He did.

Q. All right. How did he indicate that?

A. Verbally. Said that he would give me a statement.

(R. 1080-1081)

The sergeant testified about matters relating to the accuracy and integrity of the tape; the trial court admitted the tape into evidence and it was played for the jury. (R. 1083-1114) The tape was admitted over defense counsel's objection that the statement was involuntary and taken in violation of

Johnson's Fifth and Fourteenth Amendment rights. (R. 1121)

B. Proceedings Below

Johnson was indicted by a Jefferson County, Alabama grand jury for robbery/murder, a violation of Ala. Code §13A-5-40(a)(2) (1975). (R. 1311-1312) Following a jury trial, Johnson was convicted of the robbery/murder and sentenced to death. (R. 1332-1335)

On appeal to the Alabama Court of Criminal Appeals, Johnson argued in a footnote in his brief that his statement was erroneously admitted in rebuttal because it was not given voluntarily. The Court of Criminal Appeals affirmed Johnson's conviction and sentence. Johnson v. State, No. CR-90-109 (Ala.Cr.App. Jan. 21, 1992).

On certiorari in the Alabama Supreme Court, Johnson again argued in a footnote in

his initial brief that the prosecution should not have been permitted to introduce his statement in rebuttal because it was not given voluntarily. In Johnson's "Reply and Supplemental" brief in the Alabama Supreme Court he argued, for the first time in any court, that his taped statement was erroneously admitted in rebuttal because the prosecution did not prove complete compliance with Miranda v. Arizona.

In its decision reversing Johnson's conviction and sentence, the Alabama Supreme Court held that reversal for a new trial was required for a single reason: the taped statement was erroneously admitted because the prosecution failed to establish the necessary Miranda predicate. Ex parte Johnson, slip op. at 3-6. (Appendix A, pages 5-10)

In its brief on Application for Rehearing to the Alabama Supreme Court, the Petitioner again argued that the Alabama Supreme Court's

decision was in conflict with prior decisions of this Court. On April 9, 1993, the Alabama Supreme Court overruled, without issuing an opinion, the State's Application for Rehearing. (Appendix B) The cause was remanded for a new trial.

SUMMARY OF THE ARGUMENT

I.

When the Alabama Supreme Court held that the defendant's prior statement to the police was erroneously admitted in the prosecution's rebuttal case for purposes of impeaching his trial testimony because the prosecution had to prove not only voluntariness but also had to prove that the police complied with the requirements of Miranda v. Arizona, that court decided a federal question in direct conflict with the established precedents of this Honorable Court. Beginning with Walder v. United States

and Harris v. New York, this Court decided a series of cases upholding the prosecution's use of evidence and voluntary statements for purposes of impeachment, even when the evidence was inadmissible in the prosecution's case-in-chief because it was obtained in violation of the defendant's Constitutional rights. The Alabama Supreme Court's decision reversing this defendant's capital murder conviction and death sentence on this ground cannot be reconciled with this Court's prior rulings.

II.

When the Alabama Supreme Court held that the defendant's statement was erroneously admitted in the prosecution's rebuttal case for purposes of impeachment because the prosecution failed to prove that the defendant's statement was preceded by full Miranda warnings, the Alabama Supreme Court

decided this federal question in conflict with numerous decisions from the United States Courts of Appeal and other state courts of last resort. Those courts have followed the prior rulings of this Court and have held that even illegally obtained evidence may be introduced by the prosecution in rebuttal or cross-examination to impeach the defendant's trial testimony.

III.

Certiorari review and a summary reversal are warranted here. The Alabama Supreme Court's refusal to acknowledge and follow the consistent rulings of this Court in decisions involving the interpretation of the United States Constitution that clearly control this case resulted in a deviation so extreme that it can, and should, be corrected by a summary reversal.

ARGUMENT

I.

THIS COURT SHOULD GRANT CERTIORARI AND SUMMARILY REVERSE THE DECISION OF THE ALABAMA SUPREME COURT, BECAUSE IN HOLDING THAT PROOF OF FULL COMPLIANCE WITH MIRANDA V. ARIZONA, 384 U.S. 436 (1966) IS REQUIRED WHEN THE PROSECUTION OFFERS THE DEFENDANT'S STATEMENT IN REBUTTAL AND ONLY FOR PURPOSES OF IMPEACHMENT, THE ALABAMA SUPREME COURT HAS DECIDED THIS FEDERAL QUESTION IN DIRECT CONFLICT WITH THE ESTABLISHED PRECEDENTS OF THIS COURT

The prosecution offered Johnson's audiotaped statement in its rebuttal case for impeachment purposes after Johnson testified in his defense. The issue before the Alabama Supreme Court involved the requirements for establishing the admissibility of that statement for impeachment purposes. This Court resolved the issue decades ago.

In Harris v. New York, 401 U.S. 222 (1971), this Court specifically addressed the

principles it discussed in Walder v. United States, Harris v. New York, and Oregon v. Hass, and held that evidence obtained in violation of a defendant's constitutional rights may be used to impeach statements the defendant made during cross-examination that was reasonably suggested by the defendant's testimony on direct examination.

More recently, this Court again declined to disturb its decisions in the cases discussed above, and further held that the prosecution may use, for impeachment purposes, a statement taken in violation of the Michigan v. Jackson, 475 U.S. 625 (1986) rule regarding invocation of a defendant's right to counsel. Michigan v. Harvey, 494 U.S. 344 (1990). In reaching this decision, this Court relied on the principles announced beginning in Harris v. New York that evidence obtained in violation of a defendant's constitutional rights must not be used by the prosecution to

prove its case-in-chief, but that use of such evidence for purposes of impeachment is permitted in order to further the ultimate goal of searching for the truth in a criminal case. This Court stated that it had consistently rejected arguments that would permit defendants to turn the prosecution's improper methods to their own advantage by raising them as shields against proof of the defendants' own false statements. Michigan v. Harvey, 494 U.S. at 351 (quoting Harris v. New York's quotation of Walder v. United States).

Since at least 1954 in the Walder v. United States decision, this Court has consistently interpreted the Constitution to permit the prosecution to admit a variety of evidence for purposes of impeachment, even if the evidence is inadmissible for use in the prosecution's case-in-chief.

II.

THIS COURT SHOULD GRANT CERTIORARI AND SUMMARILY REVERSE THE DECISION OF THE ALABAMA SUPREME COURT, WHICH CONFLICTS WITH NUMEROUS DECISIONS OF THE UNITED STATES COURTS OF APPEAL AND WITH OTHER STATE COURTS OF LAST RESORT THAT RECOGNIZE AND FOLLOW THE FEDERAL CONSTITUTIONAL PRINCIPLES ANNOUNCED BY THIS COURT AND HOLD THAT ONLY PROOF OF VOLUNTARINESS IS REQUIRED WHEN THE PROSECUTION INTRODUCES A DEFENDANT'S STATEMENT SOLELY FOR PURPOSES OF IMPEACHMENT

In accordance with this Court's series of decisions regarding the admissibility of a defendant's statements or other evidence for impeachment purposes, many of which have been discussed above, a multitude of cases in each circuit of the United States Court of Appeals and in other state courts of last resort have also held that the prosecution may impeach a defendant with voluntary statements or other evidence, even though the evidence might not be admissible in the prosecution's case-in-chief. Because there are innumerable

federal and state cases following the decisions of this Court, only a representative few will be discussed below.

A. Federal Appellate Court Decisions

In United States v. Rhodes, 886 F.2d 375 (D.C. Cir. 1989), the defendant was convicted of bank fraud, forgery, and using a false social security number, and he claimed on appeal that reversible error occurred when statements he made during questioning by police officers and a bank security officer were admitted in the prosecution's rebuttal case because they were made without Miranda warnings and because the questioners had difficulty understanding him. Observing that in Harris v. New York, this Court held that statements not preceded by Miranda warnings could be used, as they were in rebuttal in that case, to impeach the defendant's credibility after he testified, the Court of

Appeals further noted that Harris v. New York did not prevent the prosecution from using such statements even if the evidence of perjury is thin. United States v. Rhodes, 886 F.2d at 377-378 (also citing Oregon v. Hass, 420 U.S. 714, 722 (1975)). After rejecting the defendant's claim that the statements were untrustworthy, the Court of Appeals held that no error occurred in admitting the defendant's statements in rebuttal. United States v. Rhodes, 886 F.2d at 378.

In United States v. Winter, 663 F.2d 1120 (1st Cir. 1981), cert. denied, 460 U.S. 1011 (1983), one of the defendants in a RICO conspiracy case claimed that he should not have been cross-examined about a telephone conversation intercepted by the Government because the Government failed to comply with a federal statute containing certain pre-trial notice requirements. The Court of Appeals held that "the interception, even if not

legally authorized, could be used for impeachment purposes" because this Court's precedents "firmly established that illegally obtained evidence may be used to impeach a defendant on cross-examination." United States v. Winter, 663 F.2d at 1154 (citing United States v. Havens, Oregon v. Hass, Harris v. New York, and Walder v. United States).

Not long after this Court decided Harris v. New York, the petitioner in a habeas corpus case claimed on appeal that a custodial statement he made should not have been introduced at trial because it had been taken after he requested and was denied counsel. United States ex rel. Wright v. LaVallee, 471 F.2d 123 (2d Cir. 1972), cert. denied, 414 U.S. 867 (1973). Citing Harris v. New York, the Court of Appeals rejected the petitioner's claim, finding that no error occurred even if there was a constitutional violation that

would have precluded use of the statement in the prosecution's case-in-chief because the statement was used only on cross-examination to impeach the petitioner's testimony at trial. United States ex rel. Wright v. LaVallee, 471 F.2d at 125.[2]

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[2]These cases also demonstrate that the United States Courts of Appeal have consistently interpreted the decisions of this Court to permit the prosecution to use illegally obtained evidence on cross-examination or in rebuttal to impeach a defendant's trial testimony and have applied the decisions in cases on appeal: United States v. Rowley, 975 F.2d 1357, 1361-1362 (8th Cir. 1992); Bradford v. Whitley, 953 F.2d 1008, 1009-1011 (5th Cir.), cert. denied, 113 S.Ct. 91 (1992); Jones v. Murray, 947 F.2d 1106, 1114-1115 & n.6 (4th Cir. 1991), cert denied, 112 S.Ct. 1591 (1992); United States v. Romero, 692 F.2d 699, 705 (10th Cir. 1982); United States v. Rada-Solano, 625 F.2d 577, 578-579 (5th Cir. (Fla.) cert. denied, 449 U.S. 1021 (1980); United States v. Phillips, 575 F.2d 97, 99-100 (6th Cir. 1978); United States v. Simmons, 567 F.2d 314, 320-321 (7th Cir. 1977); United States v. Cervantes, 542 F.2d 773, 777 (9th Cir. 1976); United States v. McQueen, 458 F.2d 1049, 1052-1053 (3d Cir.),

(Footnote Continued)

From the foregoing brief survey of cases from the United States Courts of Appeal, it is clear that the Alabama Supreme Court's decision, holding that federal Constitutional principles rendered inadmissible for impeachment purposes the defendant's pre-trial statement because proof of compliance with Miranda v. Arizona was lacking, stands in direct conflict with the federal courts' decisions during the past two decades in cases involving identical circumstances. This extraordinary conflict created by the Alabama Supreme Court's failure to acknowledge and apply the relevant Constitutional standards established by this Court should be reviewed and corrected by this Court on certiorari.

(Footnote Continued)
cert. denied, 409 U.S. 857 (1972); and United States v. Cranson, 453 F.2d 123, 124 (4th Cir. 1971), cert. denied, 406 U.S. 909 (1972).

B. Decisions of State Courts of Last Resort

Numerous courts of last resort in other states have also decided this federal question in accordance with the decisions of this Court during the decades preceding the Alabama Supreme Court's dramatic departure from those precedents. This extraordinary conflict, too, demonstrates the need for this Court's certiorari review and reversal of the Alabama Supreme Court's decision.

Last year, the Supreme Court of Colorado reviewed a case in which the trial court excluded the testimony of the defendant's mental health expert, but permitted the prosecution to cross-examine the defendant regarding statements he made to the expert that were inconsistent with the defendant's trial testimony. Lanari v. People, 827 P.2d 495 (Colo. 1992). The defendant claimed that this violated the attorney-client privilege,

his right to effective assistance of counsel, and his privilege against self-incrimination. The Colorado Supreme Court rejected the claims, observing that it and this Honorable Court had repeatedly held, in various constitutional contexts, that prosecutors may impeach a defendant with voluntary statements that would be inadmissible in the prosecution's case-in-chief. Lanari v. People, 827 P.2d at 501. That court reiterated that the limited admissibility of inconsistent, voluntary statements for purposes of impeachment was based on the concept that the search for truth in criminal proceedings should be encouraged, that false testimony by the defendant would subvert that essential function, and that absent the rule permitting the prosecution from using voluntary statements for impeachment purposes, there would be "no effective means ...

available to prevent the defendant from testifying falsely." Id. (citations omitted).

A decade earlier, the Supreme Court of Montana rejected a defendant's claim that due to a denial of his right to counsel during a pre-trial interview, the tape recorded statement he made should not have been admitted for purposes of impeaching his testimony at trial. State v. Cartwright, 650 P.2d 758 (Mont. 1982). Noting the "critical distinction", that the taped statement was not used in the prosecution's case-in-chief but only for impeachment,[3] the Supreme Court of Montana stated that it had followed the rule set out by this Court in Harris v. New York and Oregon v. Hass, and that there was a very good reason for the rule, which is to

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[3]This "critical distinction" is precisely the one that the Alabama Supreme Court ignored in its decision in this case.

prevent the Miranda shield to allow the defendant to commit perjury. State v. Cartwright, 650 P.2d at 761-762. The court declined to change this "sound rule", and held that the trial court properly allowed the prosecution to impeach the defendant with portions of the taped statement. State v. Cartwright, 650 P.2d at 762-763.

In Washington v. State, 432 So.2d 44 (Fla. 1983), the defendant appealed from his capital murder conviction and argued that his confession should not have been allowed into evidence because it was obtained in violation of his constitutional rights. Citing Harris v. New York, the Florida Supreme Court quickly rejected the claim and held: "The confession was presented by the state in rebuttal after appellant had testified in his own defense. Therefore, it was not necessary for the state to establish that the requirements of Miranda ... had been followed in obtaining the

confession." Washington v. State, 432 So.2d at 47. When presented with the same circumstances in Ex parte Johnson, the Alabama Supreme Court incorrectly determined that the prosecution did, in fact, have to establish that the requirements of Miranda had been followed. In doing so, the Alabama Supreme Court rendered a decision that places it in sharp conflict with numerous other state courts of last resort.[4]

For this additional reason, this Court should grant certiorari and should summarily reverse the decision of the Alabama Supreme Court.

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[4]For other state cases interpreting and applying this Court's precedents on this issue in conflict with Ex parte Johnson, see, e.g., State v. Slowinski, 450 N.W.2d 107, 110-111 (Minn. 1990); State v. Graham, 768 P.2d 259, 264-267 (Kan. 1989); State v. King, 320 S.E.2d 1, 7-8 (N.C. 1984); and People v. Maerling, 474 N.E.2d 231, 232-233 (N.Y. 1984).

III.

THIS COURT SHOULD GRANT CERTIORARI AND SUMMARILY REVERSE THE DECISION OF THE ALABAMA SUPREME COURT BECAUSE, IN IGNORING THIS COURT'S PRIOR RULINGS ON THIS FEDERAL QUESTION, THE ALABAMA SUPREME COURT DEMONSTRATED HOSTILITY TOWARD THIS COURT'S SUPREMACY AND HAS NOW POSITIONED MIRANDA V. ARIZONA AS A BARRIER TO THE ADMISSION OF VOLUNTARY STATEMENTS FOR IMPEACHMENT PURPOSES IN ALL TRIALS IN ALABAMA

In reversing Johnson's conviction on Miranda v. Arizona grounds, the Alabama Supreme Court cited and relied on five state cases.[5] None of the cases indicate that the prosecution introduced the defendant's statement only on cross-examination or in rebuttal, so each of

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[5]The cases cited are: Ex parte Callahan, 471 So.2d 463 (Ala. 1985); Arthur v. State, 575 So.2d 1165 (Ala.Cr.App. 1990); Robinson v. State, 399 So.2d 902 (Ala.Cr.App. 1981); Thomas v. State, 370 So.2d 1066 (Ala.Cr.App. 1978); and Swicegood v. State, 277 So.2d 380 (Ala.Cr.App. 1973).

those cases discusses the established requirements for a proper predicate under Miranda v. Arizona, which is necessary when the defendant's statement is admitted in the prosecution's case-in-chief. Each of the cases was therefore irrelevant to the facts of the case the Alabama Supreme Court was reviewing, because the prosecution did not offer Johnson's statement in its case-in-chief, but only in rebuttal after Johnson testified. In requiring proof of compliance with Miranda v. Arizona the Alabama Supreme Court ignored post-Miranda decisions of this Court spanning nearly two-and-a-half decades that have consistently held that the prosecution must prove only the voluntariness of the statement in these circumstances. The radical, impermissible, and unexplained departure from the rulings of this Court cannot be tolerated for at least two reasons.

First, the Alabama Supreme Court's refusal to follow the rulings of this Court necessitates action from this Court to "vindicate the supremacy of federal law." Florida v. Meyers, 466 U.S. 380, 383 (1984)(Stevens, J., Brennan J., and Marshall, J., dissenting). See also Cooper v. Aaron, 358 U.S. 1, 17-19 (1958) (reviewing principles that established that this Court's interpretation of the Constitution is the supreme law of the land). If the Alabama Supreme Court's judgment is allowed to stand, then this Court's prior decisions on this issue have no meaning and the rights acquired under those decisions will simply not exist in Alabama.

The second reason that this Court should grant certiorari and summarily reverse the Alabama Supreme Court's decision is that it will erode any sense of certainty that might have surrounded the interpretation and application of Miranda v. Arizona and its

progeny in Alabama. This decision will not quickly and quietly disappear as an unfortunate aberration in Alabama law. A summary of the decision was included, two months ago, in The Alabama Lawyer, the official publication of the Alabama State Bar. (Appendix C) Because the decision so restricts the admissibility of evidence by the prosecution, it will be cited by many defense attorneys, and Alabama's trial and appellate judges will be required to follow this ruling of the Alabama Supreme Court. Thus, in future trials in Alabama, proof that a statement was voluntarily given will not be enough to allow a defendant's statement into evidence as impeachment of his prior testimony, as Harris v. New York has provided for since 1971. If the Alabama Supreme Court is free to ignore Harris v. New York, it is reasonable to assume

that other precedents of this Court are at risk as well.[6]

Equally as clear as the need for this Court's action in this case is its jurisdiction to act. The Alabama Supreme Court's decision rests primarily on federal law. Michigan v. Long, 463 U.S. 1032 (1983). That Alabama Supreme Court referred throughout its opinion to Miranda v. Arizona, Miranda warnings, a Miranda predicate, and to that court's previous analysis (in a case involving a Miranda violation where the defendant's statement was admitted in the prosecution's case-in-chief) of United States Supreme Court

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[6]State of Alabama v. Tracy Monique Caldwell, a case currently before this Court on petition for a writ of certiorari, demonstrates an Alabama appellate court's previous departure from this Court's Fifth Amendment decisions, and an expansion of the exclusionary rules of evidence announced by this Court with regard to Miranda v. Arizona.

decisions. The state cases cited in the opinion all discuss Fifth Amendment principles and Miranda v. Arizona as well. There being no adequate or independent state ground, this Court's jurisdiction cannot be questioned.

Similarly, the need and justification for summary disposition of this case is apparent. This Court has summarily disposed of cases only occasionally and when the lower court has ignored, misunderstood, or misapplied this Court's prior rulings. Florida v. Meyers, 466 U.S. 380 (1984); Torres-Valencia v. United States, 464 U.S. 44 (1983). See also El Vocero de Puerto Rico v. Puerto Rico, 113 S.Ct. 2004 (1993); Delo v. Lashley, 113 S.Ct. 1222 (1993); Smith v. Ohio, 110 S.Ct. 1288 (1990); Delo v. Stokes, 110 S.Ct. 1880 (1990)(all summarily disposing of cases). This is precisely what occurred in the Alabama Supreme Court. The rulings of this Court in Harris v. New York and its progeny permit the

introduction of a defendant's prior statement for impeachment purposes without proof of a proper Miranda predicate. The Alabama Supreme Court's ruling requiring proof of a Miranda predicate ignores those controlling decisions and is clearly inconsistent with those precedents. Summary disposition is therefore proper here.

CONCLUSION

The Alabama Supreme Court's decision in this case is in direct conflict with the controlling decisions of this Court. Not surprisingly, it conflicts with numerous decisions from other state courts of last resort and from the United States Courts of Appeals, which have acknowledged and applied this Court's decisions. The Petitioner respectfully submits that in order to vindicate the supremacy of this Court's decisions on the issue of admissibility of

rebuttal evidence in Alabama, this Court should grant certiorari and summarily reverse the judgment of the Alabama Supreme Court.

Respectfully submitted,

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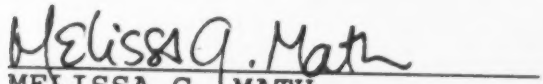

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